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\* Please file in case 11

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUDGE'S COPY

JOHN RICHARD JAE,

Plaintiff,

vs.

KENNETH D. KYLER, et al.,

Defendants.

FILED

HARRISBURG PA 17104

JUL 27 2001

Judge Rambo

MARY E. DANFEE

Per

DEPUTY CLERK

PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF IN  
OPPOSITION TO PLAINTIFF'S MOTION FOR COURT ORDER  
REQUIRING PRISON OFFICIALS TO RETURN PLAINTIFF'S  
LEGAL MATERIALS AND PROVIDE HIM WITH WRITING MATERIAL

### I. COUNTER-STATEMENT OF FACTS

DC-ADM. 803, nor any other written policy of the Pennsylvania Department of Corrections nor written SCI-Greene nor Special Management Policy, which has been provided to inmates such as this Plaintiff, require any inmate, including this plaintiff, to request the superintendent to provide additional paper and/or Carbon paper. DC-ADM. #803 V.C. 1-d.(2), specifically states, "a packet of fifty sheets of clean paper and five sheets of carbon paper. Paper must be 8 1/2 x 11 inches in size. Should the quantity of paper or carbon paper prove to be insufficient, the inmate may submit a request for more additional packet per month." Nowhere in relevant portion(s) of DC-ADM. #803, as attached to the Defendants' Brief in Opposition, is the word "superintendent" even used or mentioned. The Librarian was authorized to provide this Plaintiff with

additional sheets of paper and carbon paper on April 24, 2001. Plaintiff did not throw medication at Staff Member on May 2, 2001, but rather on May 1, 2001. On May 2, 2001, a Prison Psychiatrist stated that Plaintiff was not in danger of hurting himself, but was trying to manipulate Staff and Plaintiff was not denied his legal property from May 2, 2001 - May 9, 2001, and DC-ADM-#801, nor any other written Pa-Doc, SCI-Greene or SMU Prison Policy, which has been provided to inmates, such as this Plaintiff, require an inmate to behave and demonstrate appropriate behavior in order to be allowed to retain his or (1) records center box of legal and/or religious materials which he is permitted to have in his ~~cell~~ SMU cell under DC-ADM-#801-VI 1257. Is there any Pa-Doc, SCI-Greene or SMU Prison Policy, which has been provided to inmates, such as Plaintiff, which allows the SMU Unit Manager to prohibit any SMU Inmate, such as this Plaintiff, from having any of his own property in his cell, including legal materials and to withhold such to curb the Inmate-Plaintiff's behavior. Plaintiff Jue did not accept nor agree to the behavior management plan developed by Staff at the meeting on May 8, 2001.

Although Plaintiff Jue did in fact go through his stored property on May 22, 2001, for an hour, he has (7) seven boxes of property here and there in SMU

to go through all seven(7) of such boxes on May 2, 2001, and, as a consequence, was unable to locate the necessary legal papers he needed to prepare petition for writ of certiorari to the U.S. Supreme Court then and this is why he requested the additional 1 hour and 15 minutes with his supervisor on May 30, 2001, from his Unit Manager Mr. Cape.

While it is true that DC-ADM. ~~XXXXX~~ #801-141 (Not DC-ADM 803), a busan inmate, such as the plaintiff to exchange legal and religious materials not more than once every thirty days except upon special approval, here at SCI-Greene SMU, the SMU officers assigned to inmate property, are not following the above policy here as they are legally required to do, as they do "not" permit this plaintiff nor other SMU inmates to go to the stored property and exchange their legal and/or religious materials once every thirty days here as required by DC-ADM. #801-141. M.S.!! Plaintiff Jue has no money to purchase legal envelopes, as his prison accounts - \$157.36 are red/white.

## II. ARGUMENTS

Defendants claim & argue that:

The order requested by Jue is inappropriate for two reasons. First, the relief sought

by Jue is not authorized by the All Writs Act.

1/ See Plaintiff Jue's Affidavit, Attached hereto as Plaintiff Exhibit A. See also Murray Affidavit attached hereto as Plaintiff Exhibit B.



It appears the reason Jae seeks this relief is to prepare a writ of certiorari to be filed with the Supreme Court and not to prepare filings in this case. To the extent Jae seeks to obtain relief to allow him to pursue other matters not before this Court, the order sought would not be "necessary or appropriate in aid of this Court's respective jurisdiction." In his motion, Jae contends that "he is unable to meet all three of these court deadlines" due to his inability to gain access to his materials in storage. In Jae's Request to Mr. Capozza (Capozza Declaration, Exhibit D), Jae states that he needs access to his boxes only to prepare a petition for certiorari. Nothing in his Request suggests that he needs to gain access to his stored property in order to pursue this litigation. Certainly, in view of Jae's numerous filings in this case, it appears that he has not been prevented from pursuing his claim here. Therefore, as an initial matter, because Jae does not clearly state that he is complaining about his inability to pursue this matter, this court does not have the authority under the All Writs Act to provide the relief plaintiff seeks.

2/ See Defendant's Brief in Opposition to Plaintiff's Motion for Court Order Requiring Prison Officials to Return Plaintiff's Legal Materials and Provide Him with Writing Materials.

By way of reply to such Claim / argument, Plaintiff avers & argues that, contrary to what Defendants claim & argue, the order requested by Plaintiff is "not" inappropriate, as the relief sought by Plaintiff is "is" authorized by the All Writs Act & the reason that the Plaintiff seeks the relief is not only to prepare a writ of certiorari before the Supreme Court, but also to prepare his Brief in Opposition to Defendants' Motion for Summary Judgment And Brief In Support, both in this case & sub judice as well & the Plaintiff "does" this in his Motion For Order Of Court Requiring SCI - Greene Prison Officials To Return to the Plaintiff ALL HIS Legal Materials, Court Cases & Law Books And To Provide Him With Envelopes, Carbon Paper And Envelopes To Enable him to meet Court Deadlines, Inter Alia, Petition for Writ of Mandamus And Brief In Support, and thus, the order sought would be "necessary, appropriate in aid of [this Court's] respective jurisdiction & is" authorized by the All Writs Act. See: Commonwealth of Pennsylvania v. Parker, 526 Pa. 306, 335 (1981). Furthermore, while it is true that this Plaintiff, in his May 30, 2001, Request to his SM Unit Manager Capone, did only state that he needed access to his stored paper to find the papers necessary to prepare his petition for writ of certiorari & did not

also state in such S-30-01 request, that  
 also needed access to find & retrieve papers  
 from such stored property to prepare his B  
 In opposition to Defendant's Motion for Summary  
 Judgment, herein this instant case, he did  
 do so because he figured if he got granted  
 access to his stored property to search for  
 the papers he needed for his petition for  
 of certiorari in the Supreme Court, that while  
 was looking for such papers he'd also  
 for the papers which he also needed for his  
 Brief in opposition to Defendant's Motion  
 Summary Judgment, herein this instant case  
 so it was not necessary for him to state  
 mention both of such in his S-30-01 Reg  
 and just because this Plaintiff has filed num  
 other pleadings herein this, does not necess  
 automatically mean that he has all of the  
 necessary papers from his stored property  
 enough paper, carbon paper and/or envelope  
 to enable him to prepare and file his Brief  
 Opposition to Defendant's Motion for Summary Judgment  
 herein this case and finally just because this  
 plaintiff does not clearly state, in his motion, that  
 he does not have access to his stored property  
 locate & retrieve papers which he needs to pre  
 a pleading in this case, although he does not  
 such in his motion, such does not mean that



Court does not have the authority under the Writ Act to provide the retrof plaintiff seeks. The court is legally required under the controlling federal law in this circuit and in the U.S. Supreme Court to construe this pro se plaintiff's pleadings liberally and not hold such to stringent standard as it would formal pleadings drafted by a lawyer. Defendants' arguments here are specious & legally frivolous.

Defendants next claim & argue, that =  
More importantly, this Court intervention is not required because Joel's opportunity to pursue his claim in this court has not been unreasonably burdened by SCT-Greene officials. <sup>3/</sup>

However in reply to such, the plaintiff argues given the facts & arguments of Plaintiff's Motion for Order of Court requiring SCT-Greene FBI & CIA officials to return to this plaintiff all his legal materials, court files and law books and to provide him with enough paper, paper and envelopes to enable him to meet court deadlines. Also upon that herein this reply brief, supply and I plaintiff Joel's opportunity to pursue his claims in this court. <sup>3/</sup> See Defendants' entry in opposition to Plaintiff's Motion. Court order requiring FBI & CIA officials to return Plaintiff's

Court "has" been and will be unreasonably burdened by SCI-Greene officials.

Defendants next claim & argue, that =

"The prison policies followed in this case are reasonably related to legitimate penological interests and should be upheld."<sup>4/</sup>

However, by reply to such, the Plaintiff ~~has~~ argues that Defendants do not state what are the legitimate penological interests that the prison policies in this case which are reasonably related to such and, by law, Court may not assume nor guess at such an. Plaintiff avers that given what he states, argues & sets forth in his motion, as well as his reply brief, such prison policies are "not" related to legitimate penological interests. SCI-Greene staff do "not" follow nor enforce the prison policies at issue herein in full. <sup>the 30<sup>th</sup></sup> should not be upheld.

Defendants next claims & argues that =

First, he claims he was denied ~~access~~

paper and carbon paper. The record

✓ see Defendants' Brief in Oppos. to 12/23 Plaintiff's Motion for Court Order Regarding Prison Officials Plaintiff's Legal Materials and Provide HTR to Plaintiff's Motion at 9.



shows, however, that Jare was provided 50 sheets of paper and 5 sheets of carbon paper on April 18, 2001, May 21, 2001, and June 26, 2001. (Sebek Declaration, 6, ~~ex-6~~, Exhibit C). He was denied a request for paper and carbon paper on April 24, 2001, because it exceeded his monthly allotment of paper free-of-charge. Jare could have sought authorization from the superintendent for additional paper (Sebek Dec. 3), or purchased paper with his own funds (Sebek Dec. 4). Under these circumstances, SCI <sup>staff</sup> ~~staff~~ could not unreasonably deny Jare sufficient free paper and carbon paper to pursue the matter.

Jare also complains that he was not given large manila envelopes free-of-charge. He is entitled to 10 free regular legal envelopes per month, and may purchase manila envelopes with his own funds. (Sebek Dec. 4). This is also a reasonable accommodation of inmate legal needs.

However, by way of reply to this, the plaintiff avers that, just because he was permitted 50 sheets of paper and 5 sheets of carbon paper in opposition to Plaintiff's motion for court order requiring prison officials to provide Plaintiff with legal materials and provide him with legal materials, at 9-10.

and 5 sheets of carbon paper on April 18, 2001, May 21, 2001, and June 26, 2001, does not necessarily mean that he now has sufficient paper and carbon paper to prepare his Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support, his Plaintiff's Declaration In Opposition To Defendants' Motion For Summary Judgment And Defendants' Statement Of Undisputed Facts, Plaintiff's Statement Of Disputed Material Facts and Affidavit. Plaintiff John Richard Jae, here in this case, who such is not. Plaintiff avers & submits that, his Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support is 17 pages of argument in length and he needs three of such for a total of 51 pages of paper; that, his Plaintiff's Declaration In Opposition To Defendants' Motion For Summary Judgment And Defendants' Statement Of Undisputed Facts is 5 pages in length and needs three of such for a total of 15 pages of paper; that, his Plaintiff's Statement Of Disputed Material Facts is 3 pages in length & plaintiff needs three of such for a total of 9 pages of paper; and that, the Affidavit Plaintiff John Richard Jae is 11 pages in length & he needs three of such for a total of 33 pages of paper. Additionally, Plaintiff needs 3 pieces of paper for the cover sheet for his Appendix Exhibits, 3 pieces of paper for his own exhibits, & 3 pieces of paper for his own exhibits.

to the clerk of this court for a total of 8 pieces of paper. Additionally, Plaintiff avers & submits that altogether he needs a total of 116 pieces of paper in order to enable him to prepare his pleadings in opposition to Defendants' Summary Judgment Motion, here in this case.

Furthermore, the Plaintiff avers & submits that he needs a total of 8 pieces of carbon paper (2) two per pleading in order to enable him to prepare such pleadings, here in this case.

Although this Plaintiff did receive 50 sheets of paper and 5 sheets of carbon paper on April 18, 2001, and on May 21, 2001, and on June 26, 2001, such was an insufficient amount because Plaintiff had/has 12 active state & federal cases now and also back then.

Furthermore, plaintiff avers & argues that, it was clearly in proper & violative of DC-ADM. #803-11-C-1-d-(2) and e- for the Acting Librarian to deny his request for paper and carbon paper on April 24, 2001, because he had "not" exceeded his monthly allotment of free paper and carbon paper for April, 2001, as, DC-ADM. #803-11-C-1-d-(2)-, which states, "Should the quantity of paper and carbon provided prove to be insufficient the inmate



submit a request for one more additional packet  
month and, thus, Plaintiff ~~is~~ as entitled to  
packet of 50 sheets of paper and 5 sheets  
of carbon paper, which he requested on April  
2001, by the very wording of DC-ADM. #803-  
VI-C-1-d.(2), and furthermore, there is nothing  
whatsoever anywhere at all in DC-ADM. #803-  
VI-C-1-d.(2), nor e, nor any other DC-ADM.  
of Corrections, SCI-Greene nor SMU written  
policy, as has been provided to inmates, such  
as this Plaintiff, which requires plaintiff  
submit a request to the Superintendent for  
the additional legal packet of 50 sheets of  
paper and 5 sheets of carbon paper per  
month. NOT the word Superintendent ever even  
mentioned nor used anywhere at all there,  
DC-ADM. #803-VI-C-1, and, as a result  
such, this plaintiff did "not" by the controlling  
policy DC-ADM. #803-VI-C-1, have to send  
request to the Superintendent for additional  
paper and carbon paper per month and  
Sebek, SCI-Greene Acting Librarian, "lies  
falsifies evidence in a deliberate & malicious  
attempt to mislead this Court when she  
such in Para. NLS. 3 & 7, of her Chaswan  
Declaration, which Defendants offer in support of  
Brief in Opposition. Furthermore, DC-ADM.  
VI-C-1, is the controlling policy in this and SCI-Greene

Prison officials, including Sharon Sebek, Acting Librarian, must follow and have no authority to change Prison Policy nor to create any new policy and, by law, Prison officials may not enforce any prison policy pertaining to inmates unless such is in writing and provided to inmates.

Furthermore, plaintiff avers & argues that the Defendants "lie" when they state that "He is entitled to 10 free regular legal envelopes per month as plaintiff is not entitled to or provided with 10 free regular legal envelopes per month, as he is only provided with 10 <sup>free</sup> small regular #10 Business size white envelopes per month and further, plaintiff's prison inmate account presently has a negative balance of at least -\$55.73 and there is no way this plaintiff may purchase large manila legal size envelopes like he needs for the commissary here with his own funds, as it is clearly evident that he has no funds of his own with which to do so and the Defendants & the Acting Librarian, Sharon Sebek know the fact that this plaintiff is not provided with ten free regular legal envelopes per month and that this plaintiff has no funds (money) of his own with which to purchase legal envelopes, paper and carbon paper from the prison commissary here, but they have chosen to deliberately

evidence here & defense counsel knows better than to do

Furthermore, in Bounds v. Smith, 430 U.S. 817, 91 S.Ct. 1491, 52 L.Ed.2d 72 (1977), the U.S. Supreme Court held =

Prison officials must assist inmates in the preparation and filing of meaningful legal papers - - - (Bounds 430 U.S. at 828) \* \* \* \* \*

It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them and with stamps to mail them. (Bounds 430 U.S. at 824-25).

Although, Bounds v. Smith, does not specifically state that prison officials are required to furnish indigent inmates with large manila legal size envelopes per se, where, as herein, the indigent inmate-plaintiff states that the legal pleading which he needs to file with the Court will not fit regular envelope and unless prison officials provide him with large manila legal envelopes he will be unable to mail his legal pleadings to the Court, defense counsel and will then be denied access to the Courts under the 1st Amendment, such envelopes would be required to be provided free of charge under the 1st Amendment. Bounds v. Smith, supra.



Given the foregoing facts, arguments & Citations of Authorities, herein, supra, at 9-14, SCI-Greene Prison officials' denial of large legal Manila envelopes to this Plaintiff is "not" a reasonable accommodation of inmate legal needs and SCI-Greene Prison officials should be required to provide Plaintiff with two (2) large Manila legal envelopes to mail his summary Judgment Opposition Pleadings to the Court and to defense counsel, herein this case.

Finally, Plaintiff avers & argues, in reply to Defendants' claims, arguments of pp 10-11 of their Brief In Opposition To Plaintiff's Motion For Court Order Requiring Prison Officials To Return Plaintiff's Legal Materials And Provide Him With Writing Materials that, based upon what he already stated and set forth herein this Reply Brief, supra, and based upon his facts, arguments and citations of Authorities, as set therein his Motion For Order of Court Requiring SCI-Greene Prison Officials To Return To This Plaintiff All His Legal Materials Court Case Files Law Books And To Provide Him With Enough Paper Carbon Paper And Envelopes Enable Him To Meet Court Deadlines, Inter Alia Petition For writ of Mandamus And Brief In Support, it was "not" a reasonable action to deny the Plaintiff all his legal materials in his cell from May 9, 1999 nor was it a reasonable action to deny Plaintiff access to his stored legal property just because he had previously spent an hour going thru such on May 9, 1999 and while it might be otherwise reasonable to limit Plaintiff to going thru his stored property to normally once every 30 days given the burden on staff in limiting such in this instance was "not" a reasonable action given the fact that the officers assigned to do SMU Inmate Property here do not follow Doc 101 SMU Inmates to go through their stored property here even once every 30 days.

(s) — MR. JOHN RICHARD ST.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,  
Plaintiff,

Civil No. 00-1200

VS.

Judge Ramo  
Magistrate Judge Smy

KENNETH D. KYLER et al.,  
Defendants.

AFFIDAVIT OF PLAINTIFF JOHN RICHARD JAE

Plaintiff John Richard Jae states under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. On Friday, July 13, 2001, I gave the 8-10 SMU Sergeant here a DC-135A Inmate's Request Staff Member Form to go to my stored property exchange legal and religious materials.

2. That, the last time I went to my store property here was on Sunday, June 17, 2001, over 34 days ago now.

3. That, although I am entitled by DC-ADM #806 M.S. to go to my stored property once every 30 days, that has not gone yet.

4. That, my Inmate Prison Account has a negative balance of at least \$557.36:

Signed this 22nd day of July, 2001:  
At Waynesburg, Pennsylvania:


John Richard Jae  
MR. JOHN RICHARD JAE  
#BQ-3219  
SCI - Greene/SMU  
175 Fearless Drive

AFFIDAVIT

NOW THIS BLESSED DAY OF 21<sup>TH</sup> OF JULY 2001  
 OF OUR LORD, I JAMES S MURRAY A UNITED  
 STATES CITIZEN HOUSED AT SGT GREENE'S  
 CONFINEMENT HEREBY CERTIFY UNDER THE  
 PENALTIES OF PERJURY, AND SUBJECT TO  
 THE LAWS OF THE UNITED STATES, PURSUANT  
 TO ~~28 USC~~ § 1904 AND ALSO PURSUANT  
 TO 28 USC § 1746, THAT THE BELOW STATE-  
 MENTS ARE TRUE AND CORRECT TO BEST  
 MY KNOWLEDGE, UNDERSTANDING, BELIEF  
 RECOLLECTIONS, AND INFORMATION.

COMMONWEALTH OF PENNSYLVANIA  
 GREENE COUNTY, PA

DATED: JULY 21, 2001

S/   
 MR JAMES S MURRAY  
 DT-4152 SGT GREENE

NOW HERE COMES THE ATTEST STATEMENT  
 OF JAMES S MURRAY DT-4152 PRESENT  
 CONFINED IN OR AT SGT GREENE "SMU" H  
 22. I AM HOUSED IN SMU CONFINEMENT  
 SINCE FEBRUARY 13, 2001 AFTER OR-  
 RIVING BY WAY OF TRANSFER FROM  
 SGT ANDERSON AS A RULE OR POLICY  
 WITHIN "SMU" AT SGT GREENE YOUR



PERMITTED BY POLICY TO BE ALLOWED SAFE  
 ACCESS TO AN EXCHANGE OF WEAPON OR AN  
 RELIGIOUS PROPERTY OR ITEMS EACH AND  
 EVERY MONTH 30 DAYS TO THE COURT  
 SINCE FEBRUARY 13, 2001 UNTIL CURRENTLY  
 IN I BECAME PERSONALLY "PERMITTED" BY  
 STAFF THIS RIGHT OR LIBERTY ONLY ONCE  
 ON APRIL 21, 2001 YET EACH AND EVERY  
 MONTH I MAKE REQUEST OF STAFF TO BE  
 PERMITTED THAT HONOR OF THE SAME AS  
 PLEASE ALLOW THE RECORD TO REFLECT THAT  
 ON MAY 28, 2001 I HAD ALL MY PROPERTY CONFI-  
 SATED AND ON JUNE 10, 2001 HAD LESS THAN  
 HALF RETURNED WITHOUT PERMITTING ME TO  
 EXCHANGE OR REVIEW ALL MY ITEMS WHICH  
 IS VIOLATIONS OF POLICIES. THE POLICY STATE  
 EXCHANGE EVERY 30 DAYS IS DELIBERATELY  
 NOT ENFORCED. I KNOW PERSONALLY FOR A  
 FACT MYSELF, MR. & MRS. HAROLD VAE BU  
 3219 AND MANY MANY OTHERS HOUSED IN  
 SCI GREENE SHU ARE INTENTIONALLY SA-  
 CRIFICED TO MANY AREA'S OF ACCESS TO THE  
 COURT KNOWING ACCESS TO WEAPON MATERIAL  
 LAW LIBRARY AND SO FORTH.

COMMUNITY OF PRISONERS  
 GREENE COUNTY, PA  
 DATED JULY 21, 2001

S/ [Signature]  
 Mr. James Murre

CERTIFICATE OF SERVICE

I certify that on ~~7/22/01~~ 7/22/01, I mailed to the Person listed above and can enclose a copy of the within Reply Brief/Brief in Opposition to Plaintiff's Motion For Court Order Re Prison Officials To Return Plaintiff's Legal Materials And Provide Him With Writing Materials and Exhibits A and attached thereto, by U.S. 1st Class Mail, Postage Paid, addressed to:

Mr. Michael L. Harvey, SAG,  
Office of the Attorney General of Pennsylvania  
1st Floor - Strawberry Square  
Harrisburg, PA. 17120

I certify that on 7/22/01, I gave the originals of the documents to Prison Officials herefor mailing to this Court.

Signed under penalty of perjury on the 22nd day of July, 2001,  
Waynesburg, Pennsylvania:

(S) John Richard  
MR. JOHN RICHARD  
Plaintiff and Pro Se Car